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ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

1983 TERM

No. 83-97

STATE OF NEVADA, by and through the WELFARE DIVISION of the DEPARTMENT OF HUMAN RESOURCES and MARTHA VINE, *Appellants*,

v.

JOHN M. VINE, *Respondent*.

and

WELFARE DIVISION OF THE STATE OF NEVADA, DEPARTMENT OF HUMAN RESOURCES, *Appellant*,

v.

JOHN MICHAEL VINE and MARTHA JO VINE,
Respondents.

REPLY TO BRIEF OF RESPONDENT JOHN MICHAEL VINE IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

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Date: October 14, 1983.

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REPLY TO BRIEF OF RESPONDENT
JOHN MICHAEL VINE IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF NEVADA

THE STATE OF NEVADA IS THE REAL
PARTY IN INTEREST AS AN ASSIGNEE
OF THE CHILD'S RIGHT TO SUPPORT
AND THEREFORE IS THE PROPER PARTY
TO ASSERT THE CHILD'S
CONSTITUTIONAL DUE PROCESS RIGHTS

In February, 1981, Mrs. Vine and the child, Amanda, commenced receiving Aid to Families with Dependent Children. As a condition of receiving public assistance, Amanda and her mother assigned all of their rights to support to the State of Nevada pursuant to a written assignment and law. 42 U.S.C. §602(a)(26); 45 C.F.R. §232.11; NRS §425.350(2). The State brought an action against Mr. Vine pursuant to the Uniform Reciprocal Enforcement of Support Act seeking support for Amanda as an assignee of Amanda's rights. It is well established that an assignee is a real party in interest and is included in the definition set forth in Vol. I Moore's Manual, pages 13-2 and 13-3:

"Cases construing the real party in interest provision can be more easily understood if it is borne in mind that the true meaning of real party in interest may be summarized as follows: An action shall be prosecuted in the name of the party who, by the substantive law, has the right sought to be enforced."

Pursuant to the substantive law, the State of Nevada has the right sought to be enforced as an assignee.

It is also well established that an assignee stands in the shoes of the assignor and can assert all claims and defenses that the assignor could have asserted. See: Peck v. Dodds, 10 Nev. 204 at 207 (1875); duPont de-Bie v. Vredenburg, 490 F.2d 1057 at 1061 (4th Cr. 1976); 3 Williston on Contracts, 3d Edition, §432. Pursuant to the Uniform Reciprocal Enforcement of Support Act, the State has the same right to bring an action for support as the person to whom the duty of support is owed:

"Whenever the state, or a political subdivision thereof, furnishes support to an individual obligee, it has the same right to initiate a proceeding under this chapter as the individual obligee for the purpose of securing reimbursement for support furnished or of obtaining continuing support, or both."
NRS 130.100.

In the instant case, the State of Nevada is asserting Amanda's right to support from her father. Amanda's constitutional right to due process before her right to support may be terminated in a termination of parental right proceeding is intertwined with her right to support in the State's case. As such, it is proper for the State to assert Amanda's constitutional right. Thus, the State's interest in this case is the same as Amanda's and is in Amanda's best interests, and the State is asserting Amanda's rights as her assignee.

THE PETITION FOR CERTIORARI SHOWS
THAT AN IMPORTANT QUESTION OF
FEDERAL LAW HAS BEEN DECIDED BY
A STATE COURT WHICH HAS NOT, BUT
SHOULD BE, SETTLED BY
THE SUPREME COURT

Supreme Court Rule 17.1(c) provides as follow

"17.1 . . . The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

"(c) When a state court . . . has decided an important question of federal law which has not been, but should be, settled by this Court . . ."

In the instant case an important question of the constitutional due process rights of children in a termination of parental rights proceeding was presented to the Nevada Supreme Court. The Nevada Supreme Court recognized that the constitutional issue was raised. See Appendix, page 2a, in the Petition for Writ of Certiorari. In deciding the constitutional issue, however, the Nevada Supreme Court stated, "We have considered the other contentions raised by the appellants and found them to be without merit." Appendix, page 6a, in the Petition for Writ of Certiorari. The Nevada Supreme Court therefore had the properly raised constitutional due

process issue before it and made a negative ruling thereon. The effect of this order is to deny children their due process rights in a termination of parental rights proceeding and conclusively presume that their interests are the same as the person seeking the termination. The issue presented has not been, but should be, settled by this Court. Therefore, the requirements of Supreme Court Rule 17.1(c) have been met.

It should further be noted that the types of cases itemized in Rule 17.1 are not all inclusive as to the type of case that will be considered. This Court has discretion to hear this case as it presents special and important federal questions. Supreme Court Rule 17.1.

OPPOSING BRIEF RAISES FACTS AND
CIRCUMSTANCES WHICH ARE NOT
CONTAINED IN NOR SUPPORTED BY
THE RECORD AND WHICH SERVE
TO CLOUD THE ISSUES

The opposing brief asserts that Mr. Vine sustained a "morals conviction" and that he was a "real and genuine hazard to the welfare of AMANDA LEIGH VINE." These alleged facts are not contained in the record. When presented at oral argument before the Nevada Supreme Court, the court refused to consider this information as it was not contained in the record. These statements contained throughout the opposing brief should therefore be disregarded by this Court.

The statements contained in the opposing brief pertaining to the grounds for termination of Mr. Vine's parental rights moreover are irrelevant to this case. The opposing brief asserts that the State of Nevada is seeking to void the termination of parental rights. This is not correct and serves to cloud the issues before this Court. The Nevada Supreme Court ruled that a termination of parental rights terminates all of the rights of the child without the child having been provided the minimal due process safeguards of notice and opportunity to be heard. It is this interpretation that the child's rights are terminated without due process that is at issue. See Petition for Writ of Certiorari for arguments in this regard. There is no question that Mr. Vine's parental rights were properly terminated as he had notice and an opportunity to be heard.

The State of Nevada is seeking an order from this Court that a termination of parental rights cannot concurrently terminate the child's rights unless the child is accorded due process. It is further sought that this Court issue an order that a termination of parental rights pursuant to the statutory scheme set out in Nevada only has the effect specified in NRS 128.110:

" . . . judicially depriving the parent or parents of the custody and control of, and terminating the parental rights of the parent or parents with respect to the child . . . "

There is no mention in this statute of the child's rights nor of the parent's obligations to the child, and those rights and obligations should remain intact and unabridged, absent compliance with the mandates of due process.

DATED: October 14, 1983.

Respectfully submitted,

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